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No. 80-2152

In the Supreme Court of the United States

October Term, 1980

STATE OF MISSOURI, ET AL.,
Petitioners,

vs.

CRATON LIDDELL, ET AL., and EARLINE CALDWELL, ET AL., and JANICE ADAMS, ET AL., and BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, ET AL., and the CITY OF ST. LOUIS, MISSOURI, and, the UNITED STATES OF AMERICA,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONERS' SUPPLEMENTAL BRIEF

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STATEMENT OF THE CASE

The petitioners file this brief not only to reply to particular arguments advanced in opposing briefs filed by some of the respondents but also as a supplemental brief to advise the Court of events which have occurred since the filing of petitioners' petition.

On July 2, 1981, the district court ordered implementation of a plan for voluntary transfers of students among school districts of the St. Louis metropolitan area. See Appendix G. The State of Missouri was ordered to fund the provisions of this plan which included an increased total amount of state aid to the participating districts. Four of the 39 eligible districts elected to participate in this plan. (A fifth district later joined.) On August 24, 1981, the district court entered an order to implement the voluntary

plan with these four districts. The pending motions by the Caldwell plaintiffs as well as the City Board of Education to add these five districts as party defendants were stayed so long as they participated in good faith. See Appendix H.

Also on August 24, 1981, the district court entered an order to begin proceedings on a mandatory inter-district plan pursuant to paragraph 12(c) of the district court's May 21, 1980 order. See Appendix I. The court granted the Caldwell plaintiffs and the City Board of Education's motions to join the St. Louis County School Districts (with the exception of the five districts who have elected to participate in the voluntary plan) and stayed, pending an evidentiary hearing, the joinder of the school districts of St. Charles County and Jefferson County. The motion was also stayed with regard to the Missouri Housing Development Commission, the Housing Authority of the City of St. Louis, and the Land Clearance for Redevelopment Authority of St. Louis County, pending an evidentiary hearing. The Court, on its own motion, joined as party defendants three executives of the St. Louis County government. The Court ordered that the discovery be completed within 90 days, and that the state defendants, the United States, and the St. Louis Board of Education were ordered and directed:

> "To develop and submit to the Court by February 1, 1982, a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County."

A hearing on these matters was ordered set for March 1, 1982.

A separate order directing the court-appointed experts to begin work on a mandatory, inter-district plan is included herein as Appendix J.

ARGUMENT

I

With regard to the voluntary plan filed pursuant to paragraph 12(a) of the district court's May 21, 1980 order, the City Board of Education argues that the petitioners are premature in seeking review. As is apparent from Appendices G and H, however, it is now obvious that this is not premature. The plan is being ordered into effect and the State of Missouri is being ordered to fund it. (The City Board has even requested that the State fund transfer students from non-participating districts.) The City Board suggests that the State of Missouri can appeal the July 2, 1981 order of the district court. The State of Missouri has done so, just as, out of an abundance of caution, it filed an appeal from the December 19, 1980 order of the district court which established for the first time that funding of the voluntary plan should be borne by the State even though there has been a finding of only an intra-district violation. See Appendix D. However, in its order denying the State's request for a stay, the Court of Appeals noted the existence of the district court's December 19, 1980 order and stated:

> "We deny the motion to stay our mandate or to stay enforcement of the district court's orders and adhere to our most recent pronouncement concerning the State's legal responsibilities for the prompt desegregation of the St. Louis public school system." Appendix B, page A-33.

Later the Court stated:

> "Moreover we are satisfied that the provisions of paragraph 12, both as originally written and as amended, must be enforced." Appendix B, page A-38.

Petitioners believe that there can be no doubt that their seeking review of paragraph 12(a) is not premature. We are no longer in a planning stage and the enforcement has met with the approval of the Court of Appeals. Contrary to the arguments in the opposing briefs, the application of *Hills v. Gautreaux*, 425 U.S. 284 (1976) to such a situation is novel and presents a significant question which this Court should consider.

Similarly, the provisions of paragraph 12(b) of the district court's May 21, 1980 order regarding vocational education of the St. Louis City School District and the Special School District of St. Louis County are being ordered into effect, again with the State being ultimately responsible for the funding. Again, whether this sort of mandatory inter-district relief ordered against the State, can be based upon a finding only of an intra-district violation, presents serious questions under *Hills v. Gautreaux, supra*, and *Milliken v. Bradley*, 418 U.S. 717 (1974).

In addition, the United States suggests that the State of Missouri has consented to the entry of this plan and is precluded from attacking the legal basis for entry of any order involving the special school district. Such an assertion is flatly incorrect and in need of clarification. The district court did not approve any consent decree and simply entered an order. The process for attempting to secure a consent decree had broken down. As far as the terms of the plan for joint vocational programs was concerned, the state defendants had no objection to what had been worked out by the City School Board and the Board for the Special School District of St. Louis County. Under Missouri law school districts within the state have long had the authority to negotiate agreements for joint projects. The process broke down, however, on the problem of funding this joint agreement. Normally, if two districts enter into such a contract, they are respon-

sible for its funding. In the instant case, the State of Missouri never consented to the imposition of any financial responsibility for the operation of the vocational plan. The district court's order, however, imposed such responsibility. The propriety of such an imposition of liability is clearly inappropriate in view of the fact that this had never been an inter-district desegregation case so the finding that the separate vocational systems were a vestige of a dual system was totally lacking in evidentiary support.

With regard to the mandatory inter-district desegregation plan contemplated by paragraph 12(c) of the district court's May 21, 1980 order, the assertion in the opposing briefs that this issue is not ripe or that it is moot is no longer correct, if indeed it ever was. The district court in its August 24, 1981 order has now revived the 12(c) proceedings and to that end has joined 17 separate school districts of St. Louis County as parties defendant. The state defendants, the United States, and the City Board of Education are ordered to submit a plan for inter-district desegregation by February 1, 1982, prior to the hearing which the court has scheduled on March 1, 1982. Petitioners find it incredible to require the submission of a plan prior to the finding of any violation. However, in its order the district court stated that in its most recent opinion the Court of Appeals had affirmed its power to order a mandatory inter-district remedy. Further, the district court has ordered the three court-appointed experts to file by September 7, 1981, an outline and timetable of an inter-district remedy for implementation in the 1982-83 school year.

In its opposing brief the United States stated:

> "In other words, this paragraph [12(c)] requires the St. Louis and State parties to undertake an investigation of their practices, report the results of that investigation, and propose corrective action to the

> Court. The order does not require any corrective action or mandatory participation of non-party school districts in desegregation."

Evidently the district court does not interpret paragraph 12(c) in the same manner as the United States. Petitioners believe that the district court's actions blatantly violate the principle of *Milliken I*.

II

At least two of the respondents question whether review by certiorari is possible in view of the fact that the State of Missouri had not sought certiorari from the 1980 opinion of the Court of Appeals. The petitioners believe that certiorari is clearly appropriate pursuant to this Court's opinion in *Mercer v. Theriot*, 377 U.S. 152 (1964), in which this Court stated that it could consider all substantial federal questions determined in earlier stages of the litigation. The City Board of Education acknowledges this case but seeks to distinguish it in a footnote by reference to *Toledo Scale Company v. Computing Scale Company*, 261 U.S. 399 (1923). However, in that case the Court referred to its earlier opinion in *Hamilton-Brown Shoe Company v. Wolf Bros. and Company*, 240 U.S. 251 (1916). In discussing *Hamilton*, the Court noted that it had involved the denial of certiorari for an interlocutory ruling of the Court of Appeals and that a second petition for a writ of certiorari was not barred. Respondents submit that a reversal and remand for purposes of devising a remedy is likewise interlocutory and that certiorari therefore lies to consider the propriety of the 1980 opinion of the Court of Appeals. See *Ashcroft v. Mattis*, 431 U.S. 171 (1977). It is interesting to note that when the State argued during the course of the second appeal that there had been no reversal of the district court's finding of non-liability regarding the State, the

Court of Appeals not only rejected that argument, but stated:

> "At the very least, our opinion left the district court free to review its earlier conclusions. We will not disturb its decision to do so." See Appendix A, pages A-22 in the initial petition for certiorari.

Under the circumstances, petitioners believe that clearly the 1980 opinion of the Court of Appeals was not such a final ruling as to preclude certiorari at this time.

With regard to the Court of Appeals' holding that the City Board of Education had not disestablished the dual school system in 1954, the City Board of Education suggests that this is essentially a fact oriented question which it is not necessary for this Court to review. However, the essential question which the petitioners seek to raise is whether the Court of Appeals has applied the appropriate standard and mode of analysis to this question. A review of the Court of Appeals' opinion will indicate that it did not really hold any of the individual factual findings of the district court to be erroneous. Rather, the Court of Appeals parted company with the district court only on the question of whether these facts indicated that the City Board of Education had disestablished the dual system. This, the petitioners believe is primarily a legal conclusion or, at least, a mixed question of fact and law.

The question becomes whether the Court of Appeals properly applied the correct standards in making this determination. Was the Court of Appeals' reliance upon 1962 statistics proper? Was it proper for the Court of Appeals to consider the evidence of demographic change only for remedy purposes? Did the Court of Appeals adequately address the issue of causation?

In *Goss v. Board of Education*, 371 U.S. 683 (1963), this Court stated:

> "Now, however, eight years after this decree [Brown II] was rendered and over nine years after the first *Brown* decision, the context in which we must interpret and apply this language to plans for desegregation has been significantly altered." *Id.* at 689.

The context in which this case comes before this Court, however, is not one in which a school board delayed for years in doing anything but one in which a school board adopted a plan 36 days after this Court's decision in *Brown I*; a plan which was not challenged for 18 years. This context has never been properly recognized by the Court of Appeals.

With regard to the issue of state liability, the United States on page 12 of its brief outlines constitutional and statutory provisions of the State Board of Education which imply that local school districts are not truly autonomous. The petitioners dispute this vehemently. The United States employs language appearing in Judge Meredith's original decision. But the comparison between his comments regarding the scope of the State Board's authority with that of the City Board's will indicate that local boards of education in Missouri are truly autonomous. *Liddell v. Board of Education, City of St. Louis*, 469 F.Supp. 1304, 1312-1314 (E.D. Mo., 1979). School districts in Missouri have virtually identical authority noted by this court in *Milliken v. Bradley*, 418 U.S. 717, 742, n.20 (1974). Further, the State of Missouri, unlike Michigan, does not control boundaries, supervise site selection or approve bonds. *Id.* at 758. See Appendix K.

It is argued the State of Missouri did nothing to "help, urge, or force the St. Louis School District to dismantle its dual system." The question which the petitioners posed

and which is still unanswered is upon what basis could the State of Missouri have determined that such action was necessary. As it was pointed out in the initial petition, case law extending throughout the 60's would have indicated that the plan adopted by the City Board of Education was constitutionally adequate. Indeed, a plan virtually identical to that of the City Board's (including the continuation transfer which the Caldwell plaintiffs equate with *Monroe v. Board of Commissioners*, 391 U.S. 450 (1968)) was approved in *Goss v. Board of Education, City of Knoxville, Tennessee*, 340 F.Supp. 711 (1972), *aff'd*, 482 F.2d 1044 (6th Cir. 1973), *cert. denied*, 417 U.S. 1171 (1974). For the State of Missouri to have had a basis to have urged or forced the City School Board to take any further action, it would have to have anticipated the course of judicial opinions 20 years in the future. This appears to be a case in which the failure to anticipate the change in the law constitutes an independent constitutional violation. *Columbus Board of Education v. Penick*, 443 U.S. 449, 501 (1979) (Justice Rehnquist dissenting).

In a related issue, the petitioners assert that even assuming a proper finding of state liability, the district court and the Court of Appeals erred in imposing a blanket assessment against the State of Missouri for one-half of the cost plan. The United States responds that costly remedial action was required of the State of Texas. However, a review of the opinion will indicate that the order directed against the State of Texas was nowise similar to that entered against the State of Missouri. *United States v. Texas*, 447 F.2d 441, 446-448 (5th Cir. 1971), *cert. denied*, 404 U.S. 1016 (1972). The point which the petitioners seek to make is simply that the appropriate course of action for a district court is simply to order whatever action the Court determines is required to correct a violation. The petitioners submit that it is patently improper (particularly when the defendants are governmental entities) for a court to put its stamp of approval on any par-

ticular dollar amount to achieve these ends or to require the funds to come from any particular public source. To do so is an unwarranted interference with one of the most basic functions of any governmental unit, its budgetary process. If a district court orders a corporation to cease and desist certain polluting activity and orders it to clear up the effects of its pollution, the district court does not establish a budget and tell the corporation where to get the money. Such concerns are generally left to the corporation which must comply with the court order and petitioners believe such matters are best left to the State of Missouri and the City School Board in making their own budgetary determinations. For instance, the Missouri State Penitentiary is currently under court order and yet the district court has not set a dollar amount which must be spent or ordered a source for any funds.

CONCLUSION

The petitioners, therefore, submit that a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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SUPPLEMENTAL APPENDICES

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(4)

CRATON LIDDELL, et al.,
Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,
Defendants.

PART ONE—INTRODUCTION AND ORDER

ORDER

This order deals with the voluntary desegregation of the public schools in the St. Louis metropolitan area.

This school desegregation class action case was initiated some nine years ago, on February 18, 1972. The detailed, lengthy histories of this cause are set forth in numerous opinions and there is no need to reiterate them here. *See Liddell v. Bd. of Ed. City of St. Louis, etc.*, 469 F.Supp. 1304 (E.D. Mo. 1979); *Liddell v. Bd. of Ed. of City of St Louis, Mo.*, 491 F.Supp. 351 (E.D. Mo. 1980); and the opinions of the Court of Appeals. *Liddell v. Caldwell*, 546 F.2d 768 (8th Cir. 1976), *cert. denied*, 433 U.S. 914 (1977); *Adams v. United States*, 620 F.2d 1277, 1281-84 (8th Cir. 1980); and *Liddell v. Board of Education of the City of St. Louis*, No. 80-1458 (8th Cir., Feb. 13, 1981).

This Court has jurisdiction of the subject matter of this class action, has jurisdiction over all the parties,

and hereby enters this judgment and decree pursuant to its equitable powers.

This order is made pursuant to paragraph 12a of Judge Meredith's order herein of May 21, 1980, as amended, which provides:

> The State defendants, the United States and the St. Louis Board of Education are ordered and directed as follows:
>
> a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by . . . .
>
> The State defendants, the United States, and the St. Louis Board of Education are ordered to develop a closer and more efficient cooperation among themselves for the pursuit of the objective hereof. In particular, they are directed to establish close liaison procedures and prepare concrete and specific proposals involving the county school districts and evaluate all other reasonable proposals, including any from county districts, and intensify their joint efforts. While the results disclosed in the Updating Report of the St. Louis Board of Education of September 11, 1980 are encouraging and represent some tangible achievements, a great deal more should be accomplished.
>
> One of the subjects to be considered for voluntary cooperation between the City and the

suburban school districts, shall be the study of the feasibility of establishing magnet schools located in suburban districts with attendance open to students of both the suburbs and the City. Consideration may be given to the expansion beyond the boundaries of St. Louis County into St. Charles and Jefferson Counties subject to limits of distance and practicality. The location of these magnet schools should be determined by agreement between the St. Louis Board of Education and the suburban school districts involved. The State and the St. Louis Board of Education will investigate the availability of funding for this program. A joint report on the status and results including the availability of technical assistance and funding of this effort should be given to the Court by the United States, the State defendants and the St. Louis Board of Education on . . . .

Pursuant to [this] paragraph . . . the State of Missouri and particularly the State Board of Education and the Commissioner of Education of the State of Missouri shall submit a new Plan of voluntary and cooperative desegregation on or before . . . . The Plan shall encompass each district within St. Louis County. Jefferson and St. Charles Counties shall also be included for use of magnet schools to be located in St. Louis City and County.

The State of Missouri shall report back to the Court on . . . as to those districts in St. Louis County, Jefferson and St. Charles Counties that are willing to participate in the plan and those that are not willing to participate in the plan. The report . . . shall include the number of students that each district is willing to receive and

those that they desire to send outside of their district, either to magnet schools in the County or in the City of St. Louis, including the race and grade of those students.

Paragraph 12a in its original form was approved by the Eighth Circuit in its opinion of February 3, 1981:

> Section (a) of paragraph 12 directs the parties to "make every feasible effort" to work out a voluntary plan of inter-district pupil exchanges to be implemented in the 1980-1981 school year. Because the plan is to be voluntary, no question is raised about whether the district court will be able to enforce the plan once it is drawn up. Under the terms of the order, the plan is to be designed to "assist in alleviating the school segregation in the City of St. Louis [and to ensure] that inter-district pupil transfers will not impair the desegregation of the St. Louis school district." 491 F.Supp. at 353. Thus, the voluntary exchanges contemplated by section (a) must be viewed as a valid part of the attempt to fashion a workable remedy within the City. *Liddell v. Board of Education of the City of St. Louis,* No. 80-1458 (8th Cir., Feb. 13, 1981), slip op. at 19.

After some continuances, this Court, on March 4, 1981, ordered the State defendants, in cooperation with the Board of Education of the City of St. Louis and the United States, to file a 12(a) plan or plans within sixty days. An interim progress report was to be filed by the above parties within thirty days. Edward T. Foote, Chairman of the Desegregation Monitoring and Advisory Committee, was also requested to propose and file a plan for voluntary inter-district desegregation by March 27, 1981.

On March 27, 1981, the Chairman of the Desegration Monitoring and Advisory Committee, Dean Edward T.

Foote, submitted an educational plan for voluntary inter-district desegregation. On May 4, 1981, the State defendants filed a plan for "voluntary transfer of students in the St. Louis Metropolitan area." On May 4, 1981, the United States and the Board of Education of the City of St. Louis also filed a joint plan pursuant to this Court's order of March 4, 1981. Both the State's voluntary plan and the U.S./City Board plan drew heavily from the Foote plan. The matters contained therein are identical or substantially similar to the Foote plan in many respects. There are many areas of agreement among the three plans as well as some differences. The State and U.S./City Board plans often flesh out the Foote plan and contain more specific criteria than proposed in the Foote plan, probably as a consequence of having additional time to prepare and file their plans.

At the request of the Court, on June 18, 1981, the court-appointed expert, Dr. Gary A. Orfield, also filed an educational plan for voluntary, cooperative desegregation of the schools in the St. Louis metropolitan area. This plan also draws substantially from the Foote plan.

The intervening plaintiffs, Adams, although not ordered to do so, submitted a proposal for metropolitan desegregation on April 27, 1981. It deals with 12(a), 12(b), and 12(c) plans. It suggests that a regional school district embracing St. Louis, St. Charles and Jefferson Counties and the City of St. Louis be established which would include several local school units. The regional school district and local school units would be governed by elected boards which would have power to deal with education in the metropolitan area.

A substantial problem in effectuating a desegregation remedy is providing for its costs. The Adams proposal was the only one which submitted that a regional school district would be responsible for levying a uniform, equalized

tax for education throughout the area and distributing such tax money to the boards of local school units. The proposal is based on the proposal of the Missouri School District Reorganization Commission issued in November of 1968.

After reviewing the similarities and differences among the various plans for voluntary desegregation and considering the record as a whole, the Court in issuing this order and in adopting the plan embodied herein seeks to draw from the best aspects of each of the proposed plans.

The Court held an evidentiary hearing on May 21, 26, 27, and 28, 1981, at which all parties were afforded an opportunity to call, examine, and cross-examine witnesses and to offer exhibits and such other evidence they deemed appropriate.

Dr. Robert Bartman, Administrative Assistant to the State's Commissioner of Education, testified on behalf of the State; Superintendent Robert Wentz and Dr. Gordon Foster testified on behalf of the City Board; Dr. David Bennett, Deputy Superintendent of Milwaukee Public Schools, testified on behalf of the Caldwell plaintiffs; and Dr. Gary Orfield, the court expert, as well as Dean Edward T. Foote, also testified.

All of the witnesses testified in agreement with the conclusion that this Court and the Court of Appeals had expressed: that a voluntary inter-district desegregation plan would be helpful in desegregating the remaining segregated schools in the City's school system.

Dr. Foster and Mr. Bennett described the results of similar voluntary plans in Milwaukee, Hartford, Rochester, and Boston. Those plans contained incentives for participating school districts similar to those in the proposed 12a plans, although in some cases at a much higher level

of state contribution. None of the plans contained a tuition incentive for students similar to that proposed in the U.S./ City Board plan. The average level of participation in the plans was from 1000 to 1500 students going from the city to the suburbs, and from 150 to 200 students from the suburbs to the city.

Dr. Orfield considered the tuition incentive proposal to be an "exciting" idea and suggested implementation on a limited basis to determine its potential effect.

Mr. Bartman, on behalf of the State, testified that the State Board supported fiscal incentives for school districts but in no specific amount.

Dr. Orfield proposed that an expert be retained to design a pilot, or experimental, program to test this tuition proposal before the Court decides whether to order it implemented generally. The City Board supported Dr. Orfield's recommendation in this regard.

In addition, Dr. Orfield suggested that it may be too close to the start of the 1981-82 school year for the City Board to be successful in establishing new magnet schools which would open in September of 1981. Dr. Orfield urged that the City Board should focus on using and expanding its existing magnet schools.

Dr. Foster testified that the U.S./City Board plan promises to achieve a greater amount of actual desegregation than the State plan and is in many important respects far more specific and detailed than the State plan.

Dean Foote, who is highly regarded by all the parties, testified as to his activity in developing his plan as ordered by the Court. He testified he met with many individuals representing different interests and found there was much concensus among the various parties and sub-

urban districts. He indicated that the basic concept of the plan was voluntarism and would have a "good chance" of success. He testified as to the plan he submitted to the Court and the various components of his plan. He was cross-examined by several of the parties.

After consideration of the various 12a plans submitted to the Court; the evidence and argument submitted to this Court at the hearings held in May, 1981; the briefs and memoranda filed by the parties; the entire record in this litigation to date; and the Court having concluded that the implementation of a voluntary plan can assist in effectuating compliance with the mandate of the Eighth Circuit Court of Appeals, the Court adopts and approves the following plan to alleviate desegregation in St. Louis. Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the following plan be implemented beginning with the start of the school year 1981-1982.

PART TWO—THE PLAN

I. *General Characteristics*

These general characteristics apply to all of the following elements of the plan:

A. The plan is voluntary in philosophy and fact. This point is central to this plan and distinguishes it from other alternatives. The word "voluntary" as used throughout should be understood in its usually accepted sense, specifically:

No students would be required to attend any schools but those to which they would normally be assigned. The plan presents additional options and incentives for students, parents, and school districts. Every decision concerning

the choice of schools and districts other than students' home schools and districts would be made by students and their parents.

Participation in this plan is neither an admission of liability nor an element of proof of liability of any suburban school district in an inter-district school desegregation case.

A school district's participation in this plan would be voluntary. Each school district in the St. Louis metropolitan area is encouraged to make its own independent decision whether to participate in the plan.

B. This plan is designed to lead to an educationally sound and relatively expeditious means of promoting racial desegregation of the public schools throughout the metropolitan area, provided that a sufficient number of school districts in the metropolitan area agree to participate and the plan proves effective.

C. Voluntary acceptance of this plan by a participating district constitutes formal commitment toward furthering desegregation. All districts are encouraged to adopt any additional education or other programs that would reasonably further desegregation, whether or not they were part of this plan. By participating in the plan, each district acknowledges a responsibility not to engage in any purposeful and intentional segregative activities. Each participating district shall adopt procedures to ensure that transfers are prohibited if they would increase segregation.

D. The plan has three broad segments:

1. Permissive, inter-district transfers to existing programs that already have available space (or where space may be made available) when the transfer would decrease racial segregation;

2. Specialized "magnet" schools and "magnet" programs that could be either full-time or part-time;

3. Educational programs designed to increase and promote constructive experiences for students of different races, but not necessarily in traditional "academic" settings or within or by virtue of association with schools.

II. *Definitions*

For purposes of this order, the following terms are defined below:

"Home District" means the participating district which is the district of residence of the student transferring to another district pursuant to this plan.

"Host District" is the participating district which receives a student who transfers from another district pursuant to this plan.

"Magnet Program" means a specialized educational offering in an existing school or elsewhere that students would choose for part of their educational experience while retaining primary affiliation with their "home" schools.

"Magnet School" means a school offering a specialized program of instruction to students assigned there on a full-time basis.

"Metropolitan Area" includes the City of St. Louis, St. Louis County, St. Charles County, and Jefferson County.

"Participating Districts" means those districts that voluntarily decide to participate in the plan.

"Part-Time Integrated Programs" are educational activities in which students from two or more schools cooperatively engage, usually at an educational, cultural, or governmental institution other than the participating schools. At least one of the paired schools must not have a majority black enrollment.

"Plan Ratio" means a racial ratio of students in the schools of the participating district of seventy-five percent white—twenty-five percent black. The evidence and pleadings represent that the racial ratio in the St. Louis metropolitan area is seventy to eighty percent white. The Racial Ratio of this plan reflects both the long-range central objective of the plan and the necessity of certain realistic limitations on effort to achieve the Racial Ratio.

"Regular Programs" are non-magnet school programs. In the St. Louis public schools, regular school programs are generally organized in the following grade configurations: Kg.-5, Kg. 6-8 and 9-12.

"Space Available" is the number of individual spaces for students within a school district not being filled by resident students of the district. Space available in a district is based upon building capacity and resident student enrollment. In initially determining what space is available in their district, participating districts shall consider the following:

Currently unused but suitable space (e.g., closed buildings) may be considered as potential available space in determining the number of transfer students a participating district can accept.

Students who choose to participate in magnet schools and programs will open up space in their home districts. An estimate of the number of students in each district who will enroll in magnet schools shall be made by participating district and an appropriate adjustment made in its estimate of the space available in its district.

The formula for computing spaces available on an individual school basis shall be: total number of classrooms in building available for regular grade in-

struction minus classrooms used for special purposes times pupil teacher ratio minus anticipated enrollment equals space available.

School districts receiving transfer students will be reimbursed for expenses of all transferring students and, thus, aided in hiring additional staff as necessary to accommodate transferring students.

"Students" includes pre-school, elementary, and secondary students throughout the St. Louis metropolitan area.

III. *Permissive, Inter-District Transfers to Existing Programs*

A. Students who are members of the racial majority of the student population at a school in any participating district have the right to transfer voluntarily to a school and district in any other participating district in which they would be in the racial minority on certain conditions. The following provisions shall govern the operation of permissive inter-district transfers:

1. A student whose race is in the majority in the home district is eligible and has a right to transfer to a host district and school where the student's race is in the minority only when space is available in the host district and host school.

2. Each participating district shall list the number and grade level of transfer students it can currently accommodate without opening additional schools or hiring staff at the time it accepts this plan.

3. The host district will determine the space available in the host district and host school pursuant to the definition of space available set forth herein so that no student in the host district will be displaced by a permissive inter-district transfer student.

4. The host district shall provide the same educational and related services to the permissive transfer student as are provided its own students. The commitment to accept the student shall be for the duration of the student's voluntary participation in the plan.

5. Participating districts shall provide information to the Coordinating Committee (*see infra*) on space available by school and by grade. Information shall also be provided for dissemination that will include mention of the special characteristics of each school with available space, including program strengths, enrollment, racial composition, extracurricular activities, parent organization, location, and any other information that would reasonably be expected to assist parents and students in making an informed choice.

6. An eligible student may apply for a specific school in a host district in which available space has been identified. A student may list several choices of schools in the order of preference to allow for the possibility that space in the school of first choice is filled prior to the processing of the application. The host district shall accommodate these student preferences to the extent possible.

7. Participating districts shall actively promote the permissive inter-district transfer program through positive discussions and presentations to their students, through the distribution of written information about the choices available, and by other appropriate means.

8. Permissive interdistrict transfer applications shall be approved for eligible students by the Recruitment and Counseling Centers (*see infra*) under the supervision of the Coordinating Committee on a first-come, first-served basis, subject to the following priorities:

a. Black students who live in the City of St. Louis and white students who live in majority white county districts.

b. Any eligible black student attending a school with an enrollment that is ninety percent or more of the student's race.

c. All other eligible applicants.

9. After the first year of the operation of the plan, students must exercise their right to transfer before March 1 of each year to be eligible for priority consideration. After that date each year, they would be treated like any other student from another participating district on a first-come, first-served basis. Once a student exercises his or her right to participate in the plan, the student will continue in said plan until the student affirmatively withdraws from participation as herein set out.

10. The host district shall honor the grade placement for the student as certified by the home district.

11. A permissive transfer student may elect to return to the home district by giving notice to the host district in compliance with this plan, i.e., by March 1 of the preceding year, without penalty to a host district that had fully complied with this plan.

12. The host district shall acknowledge the acceptance and enrollment of a permissive inter-district transfer student. The acknowledgment of acceptance shall include a written notification of acceptance to the student and/or parent as practicable, the home district, and the Director of the Recruitment and Counseling Centers. Should the transfer be terminated, a written acknowledgment shall be provided the student and/or parent as practicable, the home district, and the Director of the Recruitment and Counseling Centers.

Participating districts shall also exchange student transcript information as needed.

13. All applications for permissive transfers shall be processed by the Recruitment and Counseling Centers. The Centers shall keep up-to-date records on space available in participating districts and on all permissive inter-district transfer students and the status of such transfers.

14. Any students transferring inter-district for any program shall meet the same criteria for admission and responsibilities that apply to students of the host district.

15. Once admitted, permissive inter-district transfer students will be expected to meet the same general standards, academic and other, as applied to students of the host district. Once admitted, permissive inter-district transfer students shall be eligible to participate in all school programs (academic, athletic, extracurricular and other) and shall not suffer any disability or ineligibility because they are permissive inter-district transfer students.

16. Participating districts shall apply disciplinary standards and procedures in a nondiscriminatory manner. Each participating district shall develop procedures to ensure that permissive inter-district transfer students are not resegregated through educationally unjustified assignments.

17. Students who have demonstrated disruptive behavior in their home district may be prohibited from participating in the permissive inter-district transfers. All participating districts shall notify others and provide any available, substantial evidence of disruptive behavior of a student proposing a permissive inter-district transfer to another participating district. Prior to any student's transfer, the home district shall issue a statement that the transferring student has not demonstrated disruptive behavior.

B. Subject to space available, each participating district with a student population that is majority white shall

accept up to as many black permissive inter-district transfer students as would constitute fifteen percent of the total student population in that district, except that no participating district shall be required to accept more black permissive inter-district transfer students than would raise the overall percentage of blacks in the total student population higher than twenty-five percent. Subject to space available, a participating district that is majority black would similarly accept white transfers up to the "Plan Ratio." Nothing in this section shall be construed to prohibit any participating district from exceeding the plan ratio if in doing so it furthers racial desegregation.

C. Without regard to space available or the plan ratio, and so that all participating districts have the opportunity to participate in student transfers, each participating district with an enrollment of 8,000 students or less shall make available each year at least fifty spaces, and each participating district with an enrollment of over 8,000 students shall make available at least 100 spaces. In each succeeding year, such participating districts at a minimum shall agree to make available for transfers under this plan additional spaces equivalent to an additional one percent per year of its current resident enrollment until the district's enrollment reaches the plan ratio. Any participating district which does not receive sufficient transfers to fill these minimum spaces shall actively recruit students to fill those spaces.

D. Once students exercise their right to participate in the plan, they will continue in said plan until they affirmatively withdraw from participating by notifying the host district on or before March 1 of any school year for withdrawal from the succeeding school year.

E. Students who have elected to transfer under this plan shall remain students of the host district until they

choose to return to the district where they reside. These students will not have to transfer each year or exercise a transfer choice to remain in the host district.

F. The City Board shall affirmatively recruit white students under this plan, and other participating districts shall cooperate in this effort.

G. If more permissive interdistrict transfer students apply to attend school in a participating district than there are spaces available, these students may list additional choices of host districts in order of preference, and they shall be placed in another host district of their choice if possible.

IV. *Magnet Schools and Magnet Programs*

Magnet schools and magnet programs are a very important part of a voluntary plan for desegregation. Magnet schools and programs offer specialized educational programs which cannot be offered in a school that does not draw students from a large area. Magnet schools and programs have been a very successful element in the City's desegregation plan. Therefore, provided a sufficient number of participating districts agree to accept this plan as determined by this Court:

A. The number of magnet schools in the metropolitan area shall be increased as follows:

1. Two new magnet schools shall be created in the City of St. Louis, patterned after "Individually Guided Education" at Woerner (1-8) and the "Academy of Basic Instruction with the Mastery Learning Approach" at Lyon (Kg.-8) (kindergarten will be all day and magnet). These two new magnet schools will begin operation at the start of the 1981-82 school year if the City Board determines this to be feasible. If it is not feasible, then these two

new magnet schools shall open in time for second semester of the 1981-82 school year.

2. Two existing magnet schools shall be expanded. Stix Investigative Learning Center shall become a 5-8 (Kg. for neighborhood) center, while a 1-4 Investigative Learning Center shall be established at Mason School. The Visual and Performing Arts Center at Shaw School shall become a 5-8 (Kg. for neighborhood) center and a 1-4 Visual and Performing Arts Center shall be set up at Gardenville School. These expanded magnet schools will begin operation in the 1981-82 school year if the City Board determines this to be feasible. If it is not feasible, then they shall be expanded in time for the second semester of the 1981-82 school year.

3. The participating districts, working through the Coordinating Committee, may develop such other magnet schools and programs as they believe are educationally justified and will facilitate the goals of this plan. Such magnet schools and programs shall not duplicate under-subscribed magnet schools or programs offered in the City of St. Louis.

B. Subject to the basic principle of fifty percent white to fifty percent nonwhite racial enrollment in the magnet schools:

1. Students from suburban school districts who apply for admission to existing magnet schools in the City of St. Louis shall be admitted on a first priority basis, if their transfer from the district of origin does not increase racial isolation in that district or in the magnet school.

2. Existing magnet schools to be expanded shall admit students according to the following policy:

a. The present enrollment of the school will be given first preference.

b. Second preference will be given a member of the race which is a minority at the magnet school in question.

3. New magnet schools created pursuant to this plan shall admit students according to the following policy:

a. Priority consideration will be given to black city students and white county students.

b. Second preference will be given to white city students and black county students.

C. All applicants to magnet schools or magnet programs shall make formal application to one of the Recruitment and Counseling Centers for processing. Working cooperatively, the centers will send to individual students one of the following: notices of acceptance and assignment; notices of acceptance and placement on waiting lists; and notices of rejection. A time line will be developed by the Coordinating Committee providing cut-off dates for each priority of students.

V. *Part-Time Educational Programs*

A. *Part-time Ancillary Programs.* Many of the part-time ancillary programs are presently in operation in the St. Louis public schools and shall be expanded to include participating districts.

Among those programs presently in operation which shall be expanded are the following:

Pairing and Sharing
The Law and Education Project
Springboard to Learning
Career Education
The School Partnership Program
Ethnic Heritage
Radio Station KSLH

Another program which shall be expanded for the benefit of both city and county students is the English as a Second Language (ESL) program. This program is presently operational in three schools that have been designated as ESL Centers. Students must be enrolled in the school and show need of ESL services before they can participate.

Additionally, cultural/educational institutions with long-standing and enviable records for their educational programs for school children as well as the adult community have made commitments to participate cooperatively in programs specifically designed to bring together students from city and county schools. They have well-trained staffs and well-equipped facilities for extending learning experiences beyond conventional classrooms to the broader environment of the community and the world at large. The institutions involved are:

KETC-TV
McDonnell Planetarium
Missouri Botanical Garden
Missouri Historical Society
Museum of Science and Natural History
Saint Louis Art Museum
Saint Louis Symphony
Saint Louis Zoo
United Nations Association
Urban League Library

The voluntary integration program to be offered by these institutions will be a cooperative effort between each institution and the participating schools. As a first step, the institutions will establish certain general guidelines for their respective programs and extend the opportunity for participation to schools in the city and county. Faculty

members and administrators will recommend students for participation in the programs.

While the format and scope of the programs will vary from institution to institution, each will have a common denominator: To bring together racially mixed groups of students from the metropolitan area districts periodically for programs of unique educational value.

Additionally, it is envisioned that cable television could become an integral part of the metropolitan voluntary plan.

B. *Part-Time Specialty Programs.* Students enrolled in part-time specialty programs shall attend classes a half-day for a complete semester or a full year. These programs include:

Honors Art
Honors Music
Public Safety
Transportation
Mass Media

A student may participate by enrolling in that high school or by spending one-half day in his/her home school and the other half in the high school of the specialty. Honors Art and Honors Music shall be in a school setting which houses only these programs. For these last two programs, students must spend one-half day in their home school and the other half day in Honors Art or Honors Music Programs. Public safety classes will be held at the Police Academy or Fire Academy. All specialty programs are at the secondary level.

C. *Policies and Procedures*

1. Pupils must apply for admission into part-time specialty programs and will be admitted on a first-come,

first-served basis with consideration being given to racial balance.

2. Part-time ancillary program experiences will be cooperatively planned and implemented by staff at the participating schools and institutional staff where appropriate with due consideration being given to racial balance.

VI. *Staff Exchanges*

A. *Description*

The success of a metropolitan desegregation plan will be facilitated by the provision of personnel with understanding and sensitivity for the concerns and needs of students and parents involved in new experiences at unfamiliar sites. Staff exchanges allow for meeting this need by making available in host districts professional personnel from the home districts.

Staff personnel in various capacities may agree to work in a district other than their home district for a specified period. During that time, they would report to and operate under all rules and regulations of the district in which they are working.

Basic assumptions for staff exchanges follow:

1. That the district from which a staff member comes shall continue to pay that person on the salary scale for that district.

2. That teachers and administrators will have an opportunity to confer prior to the assignment.

3. That all arrangements as to the number of staff that would transfer and the duration of such transfer shall be reached cooperatively between the home district, host district, and the teacher or administrator involved.

4. That opportunity for flexibility shall be built into these arrangements with consideration toward achieving racial balance.

B. *Policies and Procedures*

Staff exchanges involve a staff member from one district volunteering to work in another district in the same capacity he or she is presently serving, unless otherwise agreed upon.

The following guidelines, consistent with the purposes of this plan and subject to whatever revisions are mutually determined as necessary by participating districts, will be followed in implementing staff exchanges.

1. A staff member of satisfactory or above rating may volunteer to participate in the staff exchange program.

2. Short term one-to-one staff exchanges may occur as follows:

a. Principal of school A in the city or county will serve in school B in the city or county for a month, two months or whatever the agreed upon time.

b. Other staff of school A in the city or county will serve in school B in the city or county for a month, two months or the agreed upon period of time.

c. Long-term voluntary exchanges would involve a staff member declaring willingness to serve in a district other than the one to which presently assigned for a semester, a year or an indefinite period of time.

d. Guidelines by the Coordinating Committee would be established for staff exchanges to assure compliance with Court orders.

e. No district would displace present personnel to accept personnel from another district.

f. Teachers who participate in staff exchanges would attend workshops/seminars which would help prepare them for their new assignments.

VII. *Parent and Community Involvement*

A. *Description*

One of the current thrusts in education nationwide is the concept of parent involvement in schools. At many local levels throughout the United States, boards of education have organized and implemented departments which function in this particular capacity. The focus of such programs is to improve the quality of education for children.

Parental involvement program centers shall be established in strategic places throughout the entire metropolitan area. Parents will be provided a comfortable setting in which to learn about the developmental stages of children, how to develop positive self-concepts in their children, how to provide meaningful assistance with school work and through participation in field experiences, and how to provide meaningful trips to places of interest for their children.

Activities such as slide presentations, seminars and group discussions will be utilized in assisting parents to gain knowledge and skills in helping their children. Topics would include programs from The Master Package for Bowdoin Method, i.e.:

Parents and Teachers
Vocabulary Building
How Your Child Learns
Words That Win Children
Instead of Nagging
The Importance of Good Feelings
How Things Look
Getting Ready for Reading
Help Your Child Read Better

Parent and community organizations in conjunction with respective school staff would work cooperatively to open and keep open the lines of communication between school, home and community.

B. *Policies and Procedures*

The Coordinating Committee shall submit recommendations for the parental involvement program centers, including:

- identifying public information liaison persons to be assigned where needed.

- suggesting parental involvement specialists to be assigned where needed to serve as technical assistants to school principals, parents and community groups; and

- providing training in developing communication, leadership and parenting skills.

VIII. *Transportation*

A. The Missouri State Department of Elementary and Secondary Education shall provide the expertise to resolve the details of routes, distances, and kinds of appropriate transportation as the specifics of the plan to be adopted are determined.

B. The transportation plan finally approved by the State Department of Elementary and Secondary Education shall include the following:

1. Transportation will be provided for inter-district permissive transfer students enrolled in regular or magnet programs who reside more than one mile from the school site.

2. Transportation will be provided for students enrolled/participating in part-time ancillary programs and half-time specialty programs.

3. Board owned and operated buses of participating districts will be used to transport students where possible, and contracted bus service will be utilized where necessary.

4. Students will be provided with bus passes where feasible.

C. The State Department of Elementary and Secondary Education shall be responsible for negotiating transportation contracts for the purpose of transferring students participating in the plan. All transportation contracts and routes established pursuant to this plan shall be approved by the State Department of Elementary and Secondary Education.

IX. *Administrative Coordination*

A. *Coordinating Committee*

1. A "Coordinating Committee" shall be established to supervise and manage this plan and shall be organized and constituted within forty-five days of the date of this order. It shall exist as long as this plan exists.

The Coordinating Committee shall include one professional administrator selected by each participating school board, one city teacher selected by the American Federation of Teachers, and one suburban teacher selected by the Missouri Education Association, as well as one city parent selected by and serving on the Court's monitoring committee and one suburban parent serving on the Council of the Cooperating School Districts of St. Louis County. The Coordinating Committee shall include a representative of the State Department of Elementary and Secondary Education, selected by the Commissioner of Education.

Each person shall be appointed for a term of one year. If the appointing authority fails or refuses to make an appointment, the Court shall select a representative. If

a vacancy occurs, the appointing authority shall make a new appointment; if the authority fails to do so, the Court shall select a representative.

Each participating district shall name its representative to the Coordinating Committee within ten days after it accepts the voluntary desegregation plan. All other authorities entitled to designate a representative on the Coordinating Committee shall submit the name of their nominee within forty-five days of the date of this order.

2. The purpose of the Coordinating Committee is to coordinate, to oversee generally, and to plan for and make recommendations concerning the plan. The Committee shall adopt such by-laws, rules and operating procedures not inconsistent with this plan or court orders as it may deem necessary and shall submit the same for approval by the Court. The Committee shall file an initial staff budget, organization, and membership report to the Court no later than September 15, 1981.

3. The Coordinating Committee shall have a full-time staff of sufficient size to ensure the efficient implementation and operation of the plan. A director shall be named to head this staff.

The Court believes that the success or failure of the plan will depend in large measure on the actions taken by the parties within the next thirty days. To the end that these activities may be most effectively coordinated, the Court designates Susan Uchitelle, the Missouri Supervisor of Instruction for Area A, as interim director.

4. The Coordinating Committee and its staff shall, in cooperation with the participating districts, be responsible for developing policies and procedures to implement and operate all aspects of the plan. In particular, it shall be responsible for developing policies and procedures for:

a. Part-time educational programs;

b. Staff exchanges;

c. The parent and community involvement programs.

These policies and procdures shall be developed in a manner consistent with the principles set forth in the plan. They shall be developed and submitted to the Court for approval as soon as practicable, but not later than December 31, 1981.

5. The Coordinating Committee and its staff shall assist participating districts in the functions listed below:

a. Planning and implementing new magnet school programs.

b. Developing policies and procedures related to the plan.

c. Supervising recruitment and counseling in student exchanges.

d. Coordinating dissemination of information on programs to the community.

e. Assisting in identifying possible sites, building capacities and spaces available.

f. Assisting in developing and implementing an effective system for transporting students.

g. Coordinating services in the area of safety and security.

h. Coordinating staff development activities in order to prepare staff to function in integrated settings.

i. Developing guidelines for staff exchanges to assure compliance with Court orders.

j. Preparing annual budgets for submission to this Court.

k. Coordinating other administrative activities as needs become apparent.

6. Should it be determined by the Coordinating Committee that special centralized management and instructional support services are needed to implement the plan (e.g., food service, data processing, purchasing, staff development, audio-visual services) such services may be authorized by the Coordinating Committee. All participating districts shall be eligible to share in these centralized services.

7. The Coordinating Committee shall report every six months to the Court on the current status of all activities going forward under the auspices of the plan with the first report due January 1, 1982.

B. *Recruitment and Counseling Centers*

1. The existing Recruitment and Counseling Center in the City of St. Louis shall continue to function as per the St. Louis public schools desegregation plan. A new Recruitment and Counseling Center for this voluntary plan shall be established in a central location in St. Louis County. This Center shall have a full-time staff of sufficient size to ensure the efficient implementation and operation of the plan and shall report to the Court within six months of its establishment regarding its personnel, policies, and activities actually conducted.

2. The Recruitment and Counseling Centers, with their staffs increased by representatives from participating districts and under the supervision of the Coordinating Committee, shall process all applications for permissive transfers, conduct recruitment drives in the participating

districts, conduct related advertising campaigns, and coordinate the development and dissemination of information about the choices available to students.

The Recruitment and Counseling Centers shall keep up-to-date records of all permissive inter-district transfer students and the status of such transfers.

3. These centers shall be coordinated by a Director of Recruitment and Counseling Centers under the supervision of the Coordinating Committee. The city summer satellites will continue to be located in the southeast, southwest, northeast and northwest sections of the city. Additional satellite stations may be established in St. Louis, Jefferson, and St. Charles Counties as the need may arise upon application to the Court.

Any student involved in this plan, either in a part-time specialty program or in a full-time program, will be processed through the Recruitment and Counseling Centers. Students involved in part-time ancillary programs will not be processed by the Centers. The costs of these centers and any necessary support staff shall be included in the budget of the Coordinating Committee and shall be funded by the State of Missouri.

X. *Finances*

A. During the first year's operation of this plan, for each student who voluntarily transfers from his or her district to a host district, the home district will receive one-half of the state aid it would have received had the student remained in his or her home school. Each host district shall report its average cost of educating a student to the Coordinating Council. The State shall reimburse the host district for the first $1,250 of the average cost for each transfer student, and shall reimburse fifty percent of the additional average cost over $1,250. The

State shall calculate how much money would have been paid in state aid to the home districts from State foundation funds had the transfer students remained in their home districts. That sum shall be applied to the costs of this plan and shall continue to be charged to the foundation funds. Additional costs required by this plan, however, shall not be funded from foundation funds. Students who are accepted in a host district shall not be required to pay any fee to the host district as an out-of-the-district student.

After operation of the 1981-82 school year, the Court shall review the matter and enter the appropriate orders as to these costs.

B. All other costs or expenses of this plan for the first year shall be borne by the State of Missouri. This includes the start-up costs and building modification costs of new magnet schools and expanded magnet programs; parent and community involvement centers and part-time educational programs; transportation of transferring students; and the operating expenses of the Coordinating Committee, its staff, and the expanded Recruitment and Counseling Centers. If the City Board, the State, or other participating districts obtain ESAA Out-of-Cycle Assistance Grants, or other funds, the amount of such funding shall be deducted from the State's funding requirement for the plan.

C. No later than March 1, 1982, the Coordinating Committee shall, and the State of Missouri or any other party participating in the voluntary plan may, submit a budget to the Court to fund this plan for the ensuing year.

XI. *Participation in Plan*

A. The State Department of Elementary and Secondary Education of Missouri shall, within five days of the

entry of this order, distribute it to the superintendents of all school districts in the metropolitan area. All school districts located in the metropolitan area shall have until August 6, 1981, to advise the Clerk of this Court of their intention to become participating districts for the school year 1981-82 and their acceptance of all of the terms and conditions of this order. Thereafter, when non-participating school districts wish to join this plan, they shall advise the Court, on or before January 31, of their intention to become a participating district for the ensuing year.

At the time of accepting the plan, each participating district shall submit space available and information required for dissemination to the Coordinating Committee. Within ten days after acceptance, each participating district shall name its representative to the Coordinating Committee.

B. Any participating district shall have the right to withdraw from the plan for the ensuing school year, if it notifies the Court and the Coordinating Committee prior to March 1 of its intention to do so. Voluntary inter-district transfer students currently attending a participating district which elects to withdraw from the plan shall have the right to remain in their host school and the withdrawing home district shall continue to receive state aid as per this order until such time as the students graduate or leave the district, unless the Court upon good cause shown directs otherwise. Voluntary inter-district transfer students in such circumstances shall continue to enjoy all the rights and protections afforded by this plan.

C. The plan submitted by the United States/City Board contains a provision that each permissive transfer student would receive one year free education in a Missouri institution of higher education for every two years of voluntary permissive transfer. Before adopting this novel approach, the Court directs the parties to make rec-

ommendations concerning potentials and limitations of this concept and suggestions as to how it may be used on an experimental basis. The parties shall also compare the costs of a tuition-credit concept with other educational programs employed to reduce segregation. The parties are encouraged to seek the aid of educational experts. The Court may also receive suggestions from the Center for Social Organization of Schools at Johns Hopkins University and its own experts.

D. The Court may thereafter consider the possible approval of the implementation of a model tuition-credit program.

XII. *General Provisions*

A. All participating districts are required not to engage in any purposeful segregative activities and shall adopt procedures to ensure that transfers shall be prohibited if they would increase segregation.

B. Participation in this plan by any school district shall not be deemed an admission of liability nor an element of proof of liability in any inter-district school desegregation case.

C. All previous orders of this Court not inconsistent herewith remain in full force and effect.

D. Given the broad geographic dimensions of the plan, practicalities of participation by individual districts may require slight variations in the plan. The Court will consider any suggestions or responses which are consistent with the desegregation purpose of this plan, from any suburban school district which will participate in the plan. Such responses shall be submitted within twenty days.

E. This Court retains jurisdiction of this action for all purposes, including the entry of such additional orders as may be necessary or proper.

PART THREE—LEGAL ASPECTS

The Court finds that this voluntary plan meets constitutional and judicial standards. The plan adopted herein is, in the opinion of the Court, fair, adequate and reasonable; educationally sound; and conducive to obtaining a proper level of constitutional compliance and will aid in eliminating the remaining vestiges of school segregation.

The plan constitutes a valid effort to implement the mandate of the United States Court of Appeals in *Adams v. United States,* 620 F.2d 1277, 1296 (8th Cir.), *cert. denied,* 101 S.Ct. 88 (1980):

> . . . The Board shall use other techniques to ensure students in all schools will receive equal educational opportunities. It shall seek the help of the state and federal governments in financing them. These techniques may include the following:
>
> > . . . (2) Developing and implementing programs providing less than full-time integrated learning experiences,
> >
> > (3) Developing and implementing a comprehensive program of exchanging and transferring students with the suburban school districts of St. Louis County. The Board shall seek the cooperation of such school districts, the State Board of Education and the United States in developing and implementing such a plan. 620 F. Supp. at 1296.

This plan is also in accord with Judge Meredith's order of May 21, 1980, 491 F.Supp. 351, 353, to make

> every feasible effort to work out with the appropriate school districts in the St. Louis County and develop

> . . . a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein. . . .

The Court finds that the plan herein ordered would aid in reducing racial isolation and segregation in St. Louis. The Plan is designed to lead to an educationally sound and relatively expeditious means of promoting racial desegregation of the public schools throughout the metropolitan area, provided that a sufficient number of school districts in the area agree to participate in the plan and the plan proves effective.

A desegregation plan is not disapproved merely because it is voluntary. *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968), holds that the standard of a voluntary plan is the adequacy of the plan.

> The scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.

Swann v. Board of Education, 402 U.S. 1, 15 (1971).

In *Milliken v. Bradley*, 433 U.S. 267 (1977), the Supreme Court said that application of these equitable principles required the federal courts to focus on three factors: (1) that the remedy is related to the condition alleged to offend the Constitution, (2) that the decree is indeed remedial, that is, it is designed to restore victims to the position they would have occupied absent the violation, and (3) that the remedy take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution. 433 U.S. at 380-81. The Supreme Court has

recognized that the choice of remedies to redress racial discrimination is "a balancing process left, within appropriate constitutional or statutory limits, to the sound discretion of the trial court."

Fullilove v. Klutznick, 448 U.S. 448, 508 (1980) (Powell, J., concurring).

The plan is purely voluntary. By participating in such a voluntary plan, the suburban school districts would enrich the educational opportunities for all children, would decrease racial isolation, and would enhance other cooperative efforts in the metropolitan area.

Pursuant to the mandate of the Eighth Circuit Court of Appeals, this Court can countenance no further delay in elimination of the vestiges of racial segregation in the St. Louis public school sytsem. Participation in this voluntary plan would be a factor in weighing the necessity of a compulsory inter-district plan. However, if the goal of constitutional compliance cannot be met through this voluntary plan, the Court must give serious consideration to the validity of the imposition of a compulsory inter-district remedy.

The plan is directly related to remedying racial segregation in St. Louis, which is the condition alleged to offend the Constitution. The plan is remedial in nature, both with respect to educational components and in the effort to provide integrated educational opportunities to students in St. Louis. Finally, the plan takes account of the interest of parents, students, and school boards in managing their own affairs.

Dated this 2nd day of July, 1981.

/s/ William Hungate
United States District Judge

APPENDIX H

(Filed August 24, 1981)

H(336)81

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(4)

CRATON LIDDELL, et al.,
Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,
Defendants.

ORDER

On July 2, 1981, the Court ordered the implementation of An Educational Plan for Voluntary, Cooperative Desegregation of Schools in this St. Louis, Missouri, Metropolitan Area. The Court directed the school districts from St. Louis, Jefferson and St. Charles Counties to indicate their willingness to participate in the voluntary plan no later than August 6, 1981.

Thirty-five school districts rejected participation in cooperative efforts to devise a voluntary solution to assist in alleviating the school segregation in St. Louis.

The Board of Education of the City of St. Louis unconditionally, and the following school districts from St. Louis County conditionally, agreed to participate in the voluntary plan:

School District of Clayton
Kirkwood School District R-7
Ritenour School District
School District of University City

Finding the school districts' willingness to participate to be a valid attempt to fashion a workable remedy pursuant to paragraph 12(a) of Judge Meredith's order dated May 21, 1980, in *Liddell v. Board of Education*, 491 F. Supp. 351, 353 (E.D. Mo. 1980), *aff'd*, No. 80-1458 (8th Cir., Feb. 13, 1981):

IT IS HEREBY ORDERED that the above-named school districts from St. Louis County, along with the Board of Education of the City of St. Louis, and the State defendants, be and the same are directed to implement the Educational Plan for Voluntary, Cooperative Desegregation of Schools in the St. Louis, Missouri, Metropolitan Area as a pilot project.

IT IS HEREBY FURTHER ORDERED that the pending motions to make the above-named school districts from St. Louis County party-defendants in this action, as well as related discovery, be and the same are stayed. This stay shall be effective as to any district for so long as it is participating in good faith to achieve a level of integration satisfactory to the Court.

IT IS HEREBY FURTHER ORDERED that the terms and conditions of acceptance proposed by each school district be and the same are approved to the extent that they are not inconsistent with the Voluntary, Cooperative Plan set forth in this Court's order dated July 2, 1981.

Dated this 24th day of August, 1981.

/s/ William Hungate
United States District Judge

APPENDIX I

(Filed August 24, 1981)

H(337)81

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(4)

CRATON LIDDELL, et al.,
Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,
Defendants.

ORDER

This matter is before the Court on the separate motions to file amended answers to add cross claims and to add additional parties, and motion to dismiss in response thereto.

On January 9, 1981, the Board of Education of the City of St. Louis filed its motion for leave to amend its answer and add cross claims, and on the same date filed a complementary motion for leave to add additional parties. A revised motion to substitute proper parties under Rule 25 was also filed May 28, 1981.

The intervenors-plaintiffs Caldwell filed their motion on January 16, 1981, for leave to add additional parties defendant and to file cross complaints against additional parties.

The thrust of the City Board and Caldwell motions is to add as additional parties the twenty-three school

districts in St. Louis County, the five school districts in St. Charles County, and the eleven school districts in Jefferson County; the Counties of St. Louis, St. Charles, and Jefferson; and the Missouri Housing Development Commission, the Housing Authority of St. Louis County, the Housing Authority of the City of St. Louis, the Land Clearance for Redevelopment Authority of St. Louis County and various State Officials.

The original action was initiated to redress alleged constitutional violations in the operation of racially segregated schools in the City of St. Louis. The cross claims allege constitutional violations of a racially dual structure of public education prior to 1954 and the failure to take action to eliminate vestiges of segregation in metropolitan St. Louis.

The cross claims seek declaratory and injunctive relief to redress alleged deprivation under color of state law of the rights, privileges, and immunities secured by the Constitution of the United States.

Plaintiffs Liddell filed a motion to dismiss the separate motions of the City Board and Caldwell.

To foster voluntary, cooperative planning under paragraph 12(a) of Judge Meredith's order dated May 21, 1980, as affirmed by the United States Court of Appeals for the Eighth Circuit, this Court deferred ruling on the separate motions of the City Board and Caldwell.

The Court conducted hearings on the 12(a) voluntary plans submitted by the Chairman of the Desegregation Monitoring Advisory Committee, the parties, and the court-appointed expert. On July 2, 1981, the Court entered its order, incorporating provisions for the proposed plans. The Court therein provided an opportunity for the school districts from St. Louis, Jefferson, and St. Charles Counties to indicate their willingness to participate in the 12(a)

voluntary plan no later than August 6, 1981. Only four school districts conditionally agreed to participate.

In light of the overwhelming rejection of the 12(a) voluntary plan, the Court is impelled to begin proceedings on a mandatory interdistrict plan pursuant to paragraph 12(c). In paragraph 12(c), Judge Meredith directed:

> 12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:
>
> > (c) To develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

491 F.Supp. 351, 353 (E.D. Mo. 1980). On February 13, 1981, the United States Court of Appeals for the Eighth Circuit affirmed this Court's power to order a mandatory interdistrict remedy.

To enable the Court to fashion an effective remedy pursuant to paragraph 12(c), the Court is inexorably led to consideration of the motions filed by the City Board and Caldwell to join the school districts of St. Louis, Jefferson, and St. Charles Counties.

The Court has carefully considered Judge Meredith's Orders, as well as Eighth Circuit mandates; the motions of the City Board, Caldwell, and Liddell, along with the suggestions and memoranda filed by the movants and the numerous school districts and others who filed memoranda in opposition thereto as friends of the Court; and the entire record as a whole.

For purposes of Judge Meredith's directive in paragraph 12(c) to develop a compulsory interdistrict remedy:

IT IS HEREBY ORDERED that the motion of Liddell to dismiss the City Board's and Caldwell's motions be and the same is DENIED.

IT IS HEREBY FURTHER ORDERED that the separate motions of the City Board and Caldwell to file amended answers and to add cross claims and to add parties are granted in part and denied in part as set forth below:

1. The motions are GRANTED as to the following defendants pursuant to Rule 25(d) of the Federal Rules of Civil Procedure:

> The State of Missouri; Christopher S. Bond, Governor of the State of Missouri; John Ashcroft, Attorney General of the State of Missouri; Melvin E. Carnahan, Treasurer of the State of Missouri; Stephen C. Bradford, Commissioner of Administration of the State of Missouri; the State of Missouri Board of Education, and its members Erwin A. Williamson (President), Jimmy Robertson (Vice President), Grover A. Gamm, Delmar A. Cobble, Dale M. Thompson, Donald W. Shelton, and Robert Welling; and Arthur Mallory, Commissioner of Education of the State of Missouri.

2. The motions are STAYED, as well as related discovery, pending an evidentiary hearing as to the Ferguson-Florissant Board of Education.

The original Ferguson-Florissant School District was ordered by Judge Meredith to annex the school districts of Berkeley and Kinloch to achieve equality of educational opportunity and greater racial balance. *United States v. Missouri*, 388 F.Supp. 1058 (E.D. Mo.), remanded to fix new dates for accomplishment of the annexation, 515 F.2d 1365 (8th Cir.), *cert. denied* 423 U.S. 951 (1975).

In August of 1980, the Ferguson-Florissant School District was released from the jurisdiction of the federal court, which means that it was found to be in compliance with the Court's desegregation orders. There is substantial likelihood that involvement in this lawsuit might hamper the ongoing efforts of the Ferguson-Florissant School District to eliminate any remaining vestiges of segregation.

3. The motions are STAYED, as well as related discovery, pending an evidentiary hearing as to the following school districts:

ST. CHARLES COUNTY:

Ft. Zumwalt Board of Education
St. Charles Co. R-V Board of Education
Wentzville R-IV Board of Education
St. Charles Board of Education
Francis Howell R-III Board of Education

JEFFERSON COUNTY:

Dunklin R-V Board of Education
Hillsboro R-III Board of Education
Fox C-6 Board of Education
Festus R-VI Board of Education
47 Crystal City Board of Education
73 DeSoto Board of Education
Windsor C-1 Board of Education
Grandview R-II Board of Education
(E) Jefferson Co. R-VII Board of Education
Northwest Jefferson Co. R-1 Board of Education
(E) Sunrise R-IX Board of Education

4. The motions are STAYED, as well as related discovery, pending an evidentiary hearing as to St. Charles County and Jefferson County.

5. The motions are STAYED, as well as related discovery, as to the following districts, which have indicated their willingness to participate in the 12(a) voluntary plan:

Clayton Board of Education
Kirkwood Board of Education
Ritenour Board of Education
University City Board of Education

This stay shall be effective for so long as the school district is participating in good faith to achieve a level of integration satisfactory to the Court.

6. The motions are STAYED, as well as related discovery, pending an evidentiary hearing as to the Missouri Housing Development Commission, the Housing Authority of the City of St. Louis, and the Land Clearance for Redevelopment Authority of St. Louis County.

7. The motions are GRANTED as to the following school districts in St. Louis County, which are necessary parties for a complete determination of this lawsuit under paragraph 12(c) of Judge Meredith's order dated May 21, 1980, as affirmed by the United States Court of Appeals for the Eighth Circuit:

Affton Board of Education
Bayless Board of Education
Brentwood Board of Education
Hancock Place Board of Education
Hazelwood Board of Education
Jennings Board of Education
Ladue Board of Education
Lindbergh Board of Education
Maplewood-Richmond Heights Board of Education
Mehlville Board of Education

Normandy Board of Education
Parkway Board of Education
Pattonville Board of Education
Riverview Gardens Board of Education
Rockwood Board of Education
Valley Park Board of Education
Webster Groves Board of Education
Wellston Board of Education

8. The motions are GRANTED as to St. Louis County. The Court on its own motion also names the following St. Louis County government officials as party defendants:

County Executive, Gene McNary
County Treasurer, Harlow Richardson
Collector of St. Louis County
Contract Account, George C. Leachman

IT IS HEREBY FURTHER ORDERED that all discovery herein shall be complete within 90 days except for good cause shown, and except as to those parties to whom stays were specifically granted in this order. Within 75 days of the date of this order, any district unable to complete discovery shall state what discovery remains to be completed.

IT IS HEREBY FURTHER ORDERED that in accordance with Judge Meredith's order dated May 21, 1980, as amended, that the State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:

To develop and submit to the Court by February 1, 1982, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

IT IS HEREBY FURTHER ORDERED that a hearing on the 12(c) aspects of this cause, involving both alleged constitutional violations and proposed remedies, be and the same is set for March 1, 1982, at 10:00 a.m.

Dated this 24th day of August, 1981.

/s/ William Hungate
United States District Judge

(Filed August 24, 1981)

H(338)81

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(4)

CRATON LIDDELL, et al.,
Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,
Defendants.

ORDER

This matter is before the Court sua sponte. The Court is of the opinion that to further the administration of justice, the public interest should be represented in this case.

To ensure a complete and plenary presentation of the complex issues related to paragraphs 12(c) and 12(d) of Judge Meredith's order dated May 21, 1980, so that the Court may reach a proper decision,

IT IS HEREBY ORDERED that Shulamith Simon, Attorney at Law, be and she is appointed as amicus curiae to call witnesses, file pleadings, and perform such other functions as necessary to ensure the adequate representation of the public interest related to the paragraph 12(c) and 12(d) issues pending before the Court.

IT IS HEREBY FURTHER ORDERED that the fees and expenses of the amicus curiae shall be taxed as costs in this cause.

IT IS HEREBY FURTHER ORDERED that the parties shall provide copies of all pleadings and other documents filed with the Court to the appointed amicus curiae:

Shulamith Simon, Esq.
Husch, Eppenberger, Donohue,
Elson and Cornfeld
100 North Broadway
St. Louis, Missouri 63102

Dated this 24th day of August, 1981.

/s/ William Hungate
United States District Judge

APPENDIX J

(Filed August 25, 1981)

H(340)81

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(4)

CRATON LIDDELL, et al.,
Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,
Defendants.

INSTRUCTIONS TO COURT-APPOINTED EXPERTS

To provide expert assistance to this Court in developing and implementing a mandatory, interdistrict desegregation remedy pursuant to paragraph 12(c) of Judge Meredith's order dated May 21, 1980, as amended, and as affirmed by the United States Court of Appeals for the Eighth Circuit,

IT IS HEREBY ORDERED that the educational experts appointed by the Court on August 1, 1981, H(285)81, be and they are directed to begin assembling data necessary for devising a mandatory interdistrict remedy pursuant to paragraph 12(c) for presentation to the parties for implementation in the 1982-83 school year.

IT IS HEREBY FURTHER ORDERED that on or before September 7, 1981, the experts shall file a proposed timetable for outlining the broad parameters of a 12(c) mandatory interdistrict plan. The framework shall be

submitted to the Court before the expiration of their 90-day appointment, November 16, 1981.

IT IS HEREBY FURTHER ORDERED that the motion to modify duties of the court-appointed educational experts filed by the plaintiffs-intervenors Caldwell and the plaintiff-intervenor City of St. Louis, H(324)81, be and the same is denied as moot pursuant to this Court's order dated August 20, 1981, H(329)81.

Dated this 25th day of August, 1981.

/s/ William Hungate
United States District Judge

APPENDIX K

Michigan Statutes Cited By United States Supreme Court in *Milliken I* as Establishing Local Autonomy	Corresponding Missouri Statutes
1. Mich.Comp.Laws, Section 340.27, 340.55, 340.107, 340.148, 340.149, 340.188 (1967). School districts are described as autonomous political bodies corporate, operating through boards of education popularly elected.	Sections 162.461, 162.511, 162.571, 162.621 RSMo 1978.
2. Mich.Comp.Laws, Sections 340.24, 340.26, 340.77, 340.113, 340.165, 340.192, 340.352 (1967). School districts have plenary power to acquire real and personal property.	Sections 160.011, 162.441, 162.461, 162.571, 177.011 RSMo 1978.
3. Mich.Comp.Laws, Section 340.569, 340.574 (1967). School districts have plenary power to hire and contract with personnel.	Chapter 168 RSMo 1978.
4. Mich.Comp.Laws, Section 340.563 (1967). School districts have plenary power to levy taxes for operations.	Sections 164.011, 164.021, 164.071 RSMo 1978 (with a minimum levy requirement for Missouri state aid under Section 163.021 RSMo 1978.)

5. Mich.Comp.Laws, Sec-340.575 (1967). School districts have plenary power to determine the length of school terms.	Section 171.031 RSMo 1978.
6. Mich.Comp.Laws, Section 340.582 (1967). School districts have plenary power to control the admission of non-resident students.	Section 167.151 RSMo 1978.
7. Mich.Comp.Laws, Section 340.583 (1968). School districts have plenary power to determine courses of study.	Section 171.011 RSMo 1978 (with minimum requirements for materials and subjects set forth in Chapter 170 RSMo 1978).
8. Mich.Comp.Laws, Section 340.584 (1967). School districts have plenary power to provide a kindergarten program.	Sections 163.013, 163.017 RSMo 1978.
9. Mich.Comp.Laws, Section 340.585 (1967). School districts have plenary power to establish and operate vocational schools.	Sections 178.450, 178.490, 178.530 RSMo 1978.
10. Mich.Comp.Laws, Section 340.586 (1967). School districts have plenary power to offer adult educational programs.	Sections 171.091, 171.096 RSMo 1978.
11. Mich.Comp.Laws, Section 340.589 (1967). School districts have plenary power	Sections 177.091, 177.131, 177.161, 171.011 RSMo 1978 (derived from the power to

to establish attendance areas.	select sites and establish an adequate number of schools, coupled with the power to make all needful rules and regulations.)
12. Mich.Comp.Laws, Section 340.591 (1967). School districts have plenary power to arrange for the transportation of non-resident students.	Sections 167.231, 167.241, 163.161 RSMo Supp. 1980 (with state aid in Missouri computed for the transportation of certain eligible students, and with the district of residence being required to provide transportation in certain instances where non-resident students are assigned to a school.)
13. Mich.Comp.Laws, Section 340.594 (1967). School districts have plenary power to acquire transportation equipment.	Section 167.251 RSMo 1978.
14. Mich.Comp.Laws, Section 340.605 (1967). School districts have plenary power to receive gifts and bequests for educational purposes.	Section 165.011 RSMo 1978.
15. Mich.Comp.Laws, Section 340.609 (1967). School districts have plenary power to employ any attorney.	Sections 162.411, 162.511, 162.571 RSMo 1978.
16. Mich.Comp.Laws, Section 340.613 (1967). School districts have plenary power to suspend or expel students.	Sections 167.161, 167.171 RSMo 1978.

17. Mich.Comp.Laws, Section 340.614 (1967). School districts have plenary power to make rules and regulations for the operation of school.	Section 177.011 RSMo 1978.
18. Mich.Comp.Laws, Section 340.711 (1967). School districts have plenary power to acquire property by eminent domain.	Section 177.041 RSMo 1978.
19. Mich.Comp.Laws, Section 340.882 (1967). School districts have plenary power to approve and select textbooks.	Section 170.051 RSMo 1978 (with Missouri districts required to purchase and loan free all textbooks chosen from lists filed with the State Board of Education, the districts retaining additional authority to expend textbook monies and incidental fund money for the purchase of supplementary texts and materials.) Constitution of Missouri Article III Section 40: Limitations on passage of local and special laws. The general assembly shall not pass any local or special law: (20) creating new townships or changing the boundaries of townships or school districts;

(21) creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, election or school districts;

(24) regulating the management of public schools, the building or repairing of schoolhouses, and the raising of money for such purposes.